D7

identification data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: LIN-98-080-52751 Office: Nebraska Service Center Date: 19 MAR 2002

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

Public Copy

IN BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the matter remanded to her for further consideration and action.

The petitioner engages in the import and export of general merchandise. Information contained in the record indicates that the beneficiary was admitted as a B-1, visitor for business, on August 17, 1997 until November 15, 1997 and received an extension of stay until November 15, 1998. The petitioner seeks to employ the beneficiary temporarily in the United States as the general manager of its new office for two years. The director determined that the petitioner had not shown that sufficient physical premises to house the new office had been secured.

On appeal, the petitioner states that a lease agreement has been submitted. The petitioner also states that the regulations do not require that the new office be in business while the petition is still pending.

To establish L-1 eligibility under Section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

The issue in this proceeding is whether the petitioner secured sufficient physical premises to house the new office.

The United States petitioning entity was incorporated on December 31, 1997. Information contained in the record shows that it is a wholly-owned subsidiary of Guangzhou Xingchen Wood Products Company, located in Guangdong, China. The petitioner seeks to employ the beneficiary for two years at an annual salary of $32,000.

The Petition for a Nonimmigrant Worker (Form I-129) was filed on January 26, 1998. The director denied the case because a Service investigation conducted in October 1998 revealed that no business exists at the address furnished by the petitioner. The record, as it is presently constituted, does not contain a copy of the investigative report. Therefore, this Service is unable to determine what the report revealed. The record does contain a copy of a commercial lease stating that the petitioner leased premises at 366 South 500 East, Salt Lake City, Utah, from January 1, 1998 until December 31, 1999, for business office use only. Therefore, the petitioner has shown that sufficient premises were secured to

house the new office. The regulations at 8 C.F.R. 214.2(l)(3)(v) do not require that the business be in actual operation. Therefore, the petitioner has overcome the objections of the director. However, the petition may not be approved, as it has not been sufficiently demonstrated that the petitioner has met all of the eligibility requirements for L-1 classification.

This case will be remanded to the director to determine whether the petitioner has met the eligibility requirements under section 101(a)(15)(L) of the Act. If the decision will be adverse to the petitioner and is based on derogatory information considered by the Service and of which the applicant is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered. See 8 C.F.R. 103.2(b)(16)(i).

ORDER: The decision of the director is withdrawn. The matter is remanded to her for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.